

REMARKS

Applicants appreciate the courtesies extended to their representative, Allan A. Fanucci, during an interview with Examiner Lien Tran on July 30, 2003. The comments appearing herein are essentially the same as those that were presented and discussed during the interview, where agreement was reached as to the allowability of the claims.

Claims 1-19 and 21-32, as amended, appear in this application for the Examiner's review and consideration. Claim 33 has been cancelled herein. The features of claim 26 were added to claims 1, 6, 21, and 31 to further define the invention. Specifically, claims 1, 6, 21 and 31 have been amended to recite that the dough sheet or block has grooves, score lines, or combination thereof have a width of from about 0.5% to about 50% of the thickness of the dough sheet or block and a depth of about 3% to about 95% of the thickness of the dough sheet or block. Thus, no new matter has been added by these amendments and no new issues have been raised by their introduction. Accordingly, the amendments should be entered at this time for the purpose of placing the application in condition for allowance.

Claims 1-19 and 21-33 were rejected as being unpatentable over the combination of the Weber and Moline patents, the brochure on Gourmet Cookies and the newly cited excerpt from the Pillsbury Best Cookies Cookbook for the reasons set forth on pages 2-3 of the action. Applicants respectfully traverse this rejection.

The Examiner's characterization of the Weber cookie dough is essentially correct. It is a dough of the type that can be used in the present invention, but Weber fails to mention any form, shape or configuration for retaining this dough in a refrigerated state. In fact, the only mention of packaging of cookie dough for refrigerated storage comes from Weber's description of the prior art. For example, in column 1, lines 24-27, Weber discloses conventional refrigerated cookie doughs as products which can be removed from the package, cut into pieces, and baked into cookies. While no shape or form of the dough is described, applicants note that the Pillsbury Company, the assignee of the Weber product, does commercially make refrigerated cookie dough products in the form of a "rope" or "sausage" that is in accord with the preceding description. An example of this is their Holiday Cookies product, which is evidenced by product packaging that is made of record in this application and that is the subject of U.S. Patent 5,349,759 which is marked on the packaging. This product even has "marks" which show the consumer where to cut the "rope" or "sausage" to obtain appropriate size raw dough disks that can be baked into cookies. These cut disks have a generally circular or oval configuration. The Kenneally patent, U.S.

4,738,859, referenced in Weber at column 1, lines 37-47, describes a modified, but similarly configured, "rope" product configuration.

The Examiner properly acknowledges that Weber does not disclose a method of making individual cookies by the separation of separable dough pieces from a dough sheet that has grooves or score lines, followed by baking of the separated dough pieces. It should be emphasized that Weber does not disclose a sheet of block that has a thickness. Thus, the size, shape and configuration of applicants' dough sheet or block is also completely different from what is disclosed and taught by Weber, in addition to the other distinctions that are acknowledged by the Examiner.

Moline does not remedy any of the deficiencies of Weber. First of all, Moline is directed to a frozen pizza dough, and not to a refrigerated cookie or sweet dough. While this difference may seem trivial, it is not. References that disclose frozen pizza doughs are non-analogous prior art with respect to refrigerated cookie or sweet doughs. It is well known that pizza dough is generally sold in three forms: (1) as a pre-baked, room temperature crust upon which toppings can be placed and baked; (2) as a frozen uncooked dough, either separately from topping ingredients which are placed thereon by the consumer, or provided with topping ingredients in a ready-to-bake configuration; or (3) as a shapeless ball or blob of refrigerated dough that is retained in a bag or container. None of these known products teach or disclose anything relevant to the presently claimed invention, since applicants utilize a refrigerated dough sheet or block that has grooves or score lines therein that define separable pieces of refrigerated dough can be separated from the sheet or block and baked.

Moline discloses a modification of (2) above, in that a fully prepared conventional frozen pizza is first prepared, as noted e.g., in column 1, lines 43-49. This uncut, unscored frozen pizza is held at a temperature of 20-24°F and directed to a slicing and scoring station. As disclosed in column 1, lines 52-59, the frozen dough is bisected into two semi-circular segments while the upper surface of each segment is provided with radial score lines, typically 5 of them, that are formed to a depth such that only approximately 1/8 inch of frozen dough remains.

This process is entirely different from that which is claimed by applicants. There is never any occasion in Moline where a refrigerated dough is provided with grooves or score lines. In contrast, Moline's pizza dough is frozen prior to any cutting or scoring. Also, when the product is removed from the freezer for cooking, it is not refrigerated, but instead can be broken into pie-shaped segments by the consumer while still frozen, so that one or more segments can be individually baked as desired (see column 1, lines, 6-10).

Furthermore, none of the score lines of Moline intersect to define pieces of pizza to be separated and baked. This is true because the overall pie is cut into two semi-circular halves and radial score lines are placed in each half. The center point of the pie where these radial lines would otherwise intersect does not exist because of the cutting of the pie into halves. Furthermore, it is not understood how a reference that discloses a refrigerated cookie dough of undefined shape can be properly combined with a reference that discloses a frozen pizza dough. Clearly, one of the objects of Weber is to retain a refrigerated dough to retain a "fresh baked" product, while Moline is unconcerned with this. Also, Moline instructs not to separate the pie-shaped pieces unless the dough is frozen. Accordingly, the combination of Moline and Weber does not result in the invention that is defined by the present claims, and additional references are cited in an attempt to remedy the deficiencies of the cited art.

The brochure on Gourmet Cookies discloses a ready to bake frozen dough product that is supplied as a pre-cut slab, but the brochure does not disclose that the dough should or could be refrigerated as recited in the present claims. The disclosure of a frozen slab that is pre-cut is believed to mean that the dough is cut all the way through the thickness before the pieces are arranged next to each other and the dough is frozen. As noted in the brochure, there is no need for the user to do any "cutting, weighing or scooping". The user can simply break or "snap off" the frozen dough pieces for placement on a cookie sheet for baking without waiting for the dough to thaw. It appears that the "pre-cut" description cannot be interpreted as being a partial cut through the frozen dough, as this would appear to be contrary to the user's ability to easily separate the dough pieces for baking without thawing, since the uncut portion of the frozen dough would not break easily. Also, this would be inconsistent with the disclosure that no cutting is necessary.

Moreover, the brochure actually teaches away from the present claims. By disclosing a pre-cut slab, the intersecting lines which define the pieces that are baked into cookies pass through the entire dough thickness, i.e., they have a depth of 100% of the thickness of the cookie slab. In other words, the brochure suggests a cookie dough sheet that is totally or fully "pre-cut," instead of the presently claimed invention that has grooves that do not fully cut through the thickness of the dough sheet. This is possible in the present invention because the dough is refrigerated rather than frozen. Whereas a frozen dough requires a complete cut so that the pieces can be separated before baking without having to thaw the dough, applicants' soft refrigerated dough can be easily separated with only a partial cut. In fact, the partial cut is necessary since it enables the dough to remain together without premature separation of the dough pieces. Furthermore, even when a large cut, such as 75 to

95% is used, the soft dough can return into contact with each other after the grooves are made and can adhere together. The larger cuts prevent some of the sticking so that it is easier for the user to separate the dough pieces for baking. For all of these reasons, the brochure on Gourmet Cookies does not remedy the deficiencies of the other references to render the present claims obvious.

The office action states that it would have been obvious to provide the Weber dough with precut lines as taught by the Gourmet Cookies brochure. There is no basis for this conclusion since Weber does not attribute any significance to the shape of his dough. While it appears that Weber is disclosing a dough mix that can be prepared in a bowl and then portioned onto a sheet for baking into cookies, at best Weber would be suggesting that his dough would be in the form of a rope as taught by the prior art that it discusses in the background section. How is the skilled artisan taught by the Gourmet Cookies brochure to put intersecting score lines on a rope? And why would the skilled artisan conclude that Weber's dough should be first formed into the size and configuration that Gourmet Cookies uses and then refrigerate rather than freeze the dough? Certainly, the Gourmet Cookies brochure does not suggest anything about refrigerated dough. Applicants submit that these references are directed to two different solutions to the problem of trying to prepare cookie dough products that would be accepted by consumers, rather than representing disclosures that would be combined by skilled artisans in an attempt to prepare new products.

The Pillsbury "Refrigerator Cookie" excerpt is irrelevant to the present invention. This excerpt merely explains that a cookie dough can be made ahead of time, molded into 2-inch logs, wrapped with plastic wrap or wax paper, and then be refrigerated for up to two weeks. For preparing cookies, the dough is removed from the refrigerator and unwrapped and then is sliced with a thin sharp knife to form the portions that are to be baked into cookies. When cutting the portions, the log is rotated so that it does not become flattened. This procedure enables the user to bake and enjoy a few cookies each day rather than having to bake dozens at once. However, there are two disadvantages in this procedure. First, the dough must be made from scratch, then molded into the logs and refrigerated. This is a time consuming exercise that most individuals have neither the time nor patience to follow. Furthermore, additional work is required when the cookies are to be baked, since the consumer must cut the log into the desired size portions before baking. Moreover, care must be taken to keep the dough from flattening so that round pieces will result in round cookies after baking.

The Examiner appears to be relying upon this excerpt due to its disclosure that, for longer storage, the logs can be placed in freezer bags and held in the freezer for up to six weeks. But this does not teach how to prepare a refrigerated dough that includes separable dough portions that can be removed from the dough without cutting so that freshly baked cookies can be obtained with a minimum of effort. Furthermore, the fact that this reference teaches that freezing the dough enables it to last longer does not teach that one should take a frozen cookie dough, such as that of the Gourmet Cookies brochure, and store it in the refrigerator for a shorter time prior to use. The Gourmet Cookies brochure specifically states that the frozen cookies should be baked without thawing, and thus is inconsistent with the alleged teaching of the Refrigerator Cookie excerpt. Moreover, consumers who purchase frozen foods do not consider storing them in the refrigerator. Accordingly, the Examiner's selection of the Pillsbury Refrigerator Cookie excerpt for use in the present combination rejection could only have been based on the use of applicants' specification and claims as a guide to formulate the rejection. There clearly is no teaching in this excerpt that tells one of ordinary skill in the art how to modify any of the other cited references to result in the products or processes of the present invention.

The Refrigerator Cookies excerpt appears to be yet another way to try to interest consumers in using refrigerated or frozen cookie doughs to bake cookies. Since the doughs in this reference are also in rope or log form, even if it is combined with the other references, it does not render applicants' claims obvious.

The U.S. Supreme Court established the basic rules for analyzing the obviousness of an invention in *Graham v. Deere Co.*, 383 U.S.1, 148 U.S.P.Q. 459 (1966), articulating various factual inquiries and "secondary considerations" or indicia of nonobviousness. The economic and motivational issues associated with the invention can be used to shed light on whether the skilled artisan would have found the modification obvious to do. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579, 42 U.S.P.Q.2d 1378, 1384 (Fed. Cir. 1997) ("objective indicia of nonobviousness, when present, are invariably relevant to a determination under Section 103"). Such indicia of nonobviousness can include not only a showing of unexpected results, but also commercial success associated with a claimed invention. See, for example, *Demuco Corp. v. F. Von Lunsdorff Licensing Ltd.*, 851 F.2d 1387, 1391, U.S.P.Q.2d 1222, 1225 (Fed. Cir. 1988).

The cookie dough products that are prepared and used according to the present claims have experienced tremendous commercial success, and this further supports the non-obviousness of the invention. Consumer demand is high for products that are covered by the

claims of this application and parent applications and patents, both due to the ease of making cookies as well as to the freshness of a refrigerated, rather than frozen, dough. If necessary, the assignee can submit evidence of this success.

This success is due, at least in part, to the novel features of the invention. In particular, none of the references, whether considered alone or in combination with any other, discloses, teaches or suggests the present claim feature of a sweet or cookie dough sheet or block that has separable pieces of dough defined by grooves, score lines or combinations thereof, wherein the grooves, score lines, or combination thereof have a width of from about 0.5% to about 50% of the thickness of the dough sheet or block and a depth of about 3% to about 95% of the thickness of the dough sheet or block. Thus, all current prior art rejections should be withdrawn as agreed upon at the interview.

Accordingly, the entire application is believed to be in condition for allowance, early notice of which would be appreciated.

No fee is believed to be due for this submission. Should any fees be due, however, please charge such fees to Winston & Strawn Deposit Account No. 501-814.

Respectfully submitted,



Allan A. Fanucci Reg. No. 30,256

WINSTON & STRAWN
CUSTOMER NO. 28765
(212) 294-3311

Date: 10/1/03

OFFICIAL

RECEIVED
CENTRAL FAX CENTER

OCT 02 2003